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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 565

THE OKANOGAN, METHOW, SAN POELIS (OR SAN POIL), NESPELEM, COLVILLE, AND LAKE INDIAN TRIBES OR BANDS OF THE STATE OF WASHINGTON, PETITIONERS,

vs.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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[fol. 1]

SUPREME COURT OF THE UNITED STATES

October Term, 1928

No. 565

The Okanogan, Methow, San Poils (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington, Petitioners,

vs.

The United States, Respondent

Petition for Writ of Certiorari to the Court of Claims

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

These petitioners, by their counsel, pray that a writ of certiorari may issue to review the judgment of the Court of Claims herein, entered April 16, 1928, which sustained defendant's demurrer and dismissed the petition, on the ground that the bill under which it was filed never became a law. A motion for rehearing was denied October 22, 1928.

Statement of the Case

Senate Bill No. 3185, 69th Congress, First Session, entitled "An Act authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims," having been duly passed by both houses of Congress and having been duly signed and attested by the presiding officers thereof, [fol. 2] was duly presented to the President for his consideration on June 24, 1926. On July 3, 1926 (eight days thereafter, Sundays excepted) the First Session of the 69th Congress adjourned for the summer recess. The President did not sign said bill, or file it with the Secretary of State without his signature, or return it with his objections to the House in which it originated within ten days (Sundays excepted) after it was so presented to him, or at all.

Petitioners claim that the bill became a law because of the President's failure to return the bill to the Senate with his objections within ten days (Sundays excepted) after it was presented to him, as provided by Article 1, Section VII, Clause 2, of the Constitution of the United States, because he was not prevented from so returning the bill by the adjournment of the First Session of the 69th Congress, as this Congress did not terminate until March 4, 1927, and the 69th Congress continued as an existing legislative body and the officers of the two Houses thereof continued to perform their duties until said date.

Question Presented

The sole question here involved is whether by the adjournment of the First Session of the 69th Congress the President was prevented from returning the bill with his objections to the House in which it originated, under that part of Article 1, Section VII, Clause 2, of the Constitution of the United States, providing, "If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law," so that said bill thereby failed to become a law.

Reasons for Granting this Petition

1. The question here involved is of great public interest [fol. 3] and far-reaching importance.

2. This Court has not heretofore construed the words "by their adjournment prevent its return," in Article 1, Section VII, Clause 2 of the Constitution of the United States, and it is, therefore, still an open question before this Court as to whether the word "adjournment" therein refers to a final adjournment of the Congress; the adjournment of a session of the Congress, or to the adjournment of the Congress from day to day, or for longer periods, during a session.

3. This Court has not heretofore construed the words "by their adjournment prevent its return," in Article 1,

Section VII, Clause 2 of the Constitution of the United States, and it is still, therefore, an open question before this Court as to whether the sine die "adjournment" of "the Congress," or the adjournment of a session or sitting thereof, or from day to day, or for a longer period of time during a session, "prevents" the return of a bill with the President's objections to the Congress under the quoted language of the Constitution.

4. This Court has not heretofore construed the words "10 days" as used in said quoted clause and it is still, therefore, an open question whether the "10 days" under contemplation are 10 consecutive legislative days (Sundays excepted); therefore, this Court has not determined whether the return must be made within 10 calendar days and during a recess of the active legislative settings of the Congress, or may be made within 10 legislative days and when the Congress has again resumed its active legislative sittings upon the adjournment.

5. It would appear to be the constitutional duty of the President to afford Congress an opportunity to consider his objections to all bills passed by it, if possible for him to do so, before the final adjournment of any particular Congress, for the reason that Article 1, Section 1 of the Constitution has vested Congress with the exclusive power [fol. 4] of legislation, and the President did not give Congress an opportunity to consider his objections to the legislation here in question, although this Congress did not terminate until March 4, 1927, and was in legislative session for several months prior thereto, and the officers of both Houses thereof continued to perform their duties until said date, notwithstanding that the first legislative session of the Congress ended on July 3, 1926 by adjournment for summer recess.

6. The action of the President in the case at bar appears to be in conflict with the exercise by Congress, and to deprive Congress of its exclusive right to legislate under Article 1, Section 1 of the Constitution, as his action, if valid, amounts to an absolute veto by him of the legislation here in question, while this Congress was still in actual existence as a legislative body; and deprives the Congress

of its constitutional right to repass the identical legislation by a two-thirds vote and thus make it a law notwithstanding the executive objections.

7. Because the question here involved necessitates the final determination of the line of demarkation between the Executive and Legislative Branches of the government, as to the extent of the right of the Executive to negative any legislation, and the right of the Congress to reconsider legislation objected to by the Executive, it is believed that the case at bar should be determined by this Court as the Court of last resort.

8. In view of the fact that Judiciary Committees of both Senate and House have at different times disagreed with the construction given to this part of Article 1, Section VII, Clause 2, by some of the Presidents and their legal advisors, and that the highest courts of several of the States have construed identical or similar language in their State constitutions directly contrary to the construction sought [fol. 5] to be reviewed, it is considered of the utmost importance that this provision should be construed by this Honorable Court.

9. Because of the far-reaching importance of any judicial construction of the Constitution, it is believed that every question involving such construction should be finally determined by this Honorable Court as a court of final resort thereon.

Wherefore it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Court of Claims should be granted.

The Okanogan, Methow, San Poeil (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington. William S. Lewis, by William S. Lewis, Counsel. A. R. Serven, John G. Carter, of Counsel.

IN THE

Court of Claims of the United States

THE OKANOGAN, METHOW, SAN POEILS (OR SAN POIL), NESPELEM, COLVILLE AND LAKE INDIAN TRIBES OR BANDS OF THE STATE OF WASHINGTON,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. H-121

PETITION

(Filed March 28, 1927.)

To the Honorable, the Chief Justice and Associate Justices of the Court of Claims of the United States:

Your petitioners, the Okanogan, Methow, San Poeils (or San Poil), Nespelem, Colville and Lake Indian tribes or bands of the State of Washington, and the individual members thereof, (now commonly known as the Okanogan and Colville tribes of Indians), respectfully represent to the Court:

I

1. The petitioners are all members of what were and are known as the Okanogan, Methow, San Poeils

(or San Poil), Nespelem, Colville and Lake Indian tribes or bands of the State of Washington, and that they reside in the said State of Washington, principally on or near the Colville Indian Reservation in said State. And that these petitioners are the same and identical several tribes or bands of Indians referred to and particularly mentioned in the hereinafter mentioned Act of Congress of the United States, and for whose special benefit and relief said law was enacted and are the component parts of what are now commonly known as the Okanogan and Colville tribes of Indians. That the petitioners have employed William S. Lewis, of the bar of this Court, as their attorney to prosecute their claims under a contract, executed in their behalf by a committee selected by the petitioners in accordance with existing law, and approved as provided by existing law.

The petitioners are the owners and all the parties interested in the claims herein sued upon, and that no assignment or transfer of said claims, or any part thereof, or of any interest therein, has been made by them or any of them; that the petitioners have not commenced, nor have they, or any of them, now pending any suit, or suits, on account of the claims herein set forth, against the defendant, or any of the defendant's agents, in any other court; that the petitioners believe they are justly entitled to recover the amount of the claims here sued upon, after deducting therefrom all just offsets and counter claims to which the defendant may be found to be entitled: that these petitioners have not voluntarily aided, abetted, or given encouragement to rebellion against the defendant: and have at all times shown allegiance to the defendant, United States; and that the petitioners believe the facts stated in this petition are true.

2. Petitioners bring this suit by virtue of, and under authority granted by, an Act of Congress of the United

States of America, towit: Senate Bill No. 3185, 69th Congress, 1st Session, entitled "An Act authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims": which said Act having been duly passed by both Houses of the Congress of the United States on June 23, 1926, and having been duly signed by the presiding officers thereof, and been duly attested as by law required, was thereafter on June 24, 1926, duly presented to the President of the United States, and the said bill not being returned by the President within 10 days after it was so presented to him, or at all, the same became, and now is a law in like manner as if he had signed it; the said 69th Congress of the United States not having by adjournment prevented its return. (Article 1, Sec. 7, clause 2, Constitution of the United States.)

3. The said Act of Congress and the Sections thereof upon which the petitioners rely read as follows towit:

> *Be it enacted by the Senate and House of representatives of the United States of America in Congress assembled,* that jurisdiction is hereby conferred on the Court of Claims, with the right to appeal to the Supreme Court of the United States by either party, as in other cases, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims of the Okanogan, Methow, San Poells (or San Poil), Nespelem, Colville, and Lake Indian tribes or bands of the State of Washington, or any of said tribes or bands, against the United States arising under or growing out of the original Indian title, claim, or rights of the said Indian tribes and bands, or any of said tribes or bands (with whom no treaty has been made), in, to, or upon the whole or any part of the lands and their appurtenances in the State of Washington embraced within the follow-

ing general descriptions, to wit: Commencing at the intersection of the west bank of the Okanogan River with the international boundary line between the Province of British Columbia, Canada, and the State of Washington, thence west along said line to its intersection with the summit of the main ridge of the Cascade Mountains; thence in a southerly direction along the summit of said main ridge of the Cascade Mountains to a point where the northern tributaries of Lake Chelan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Chelan and the Methow River to the Columbia River; thence, crossing the Columbia River in a true line course east, to a point whose longitude is one hundred and nineteen degrees and ten minutes; thence in a true south course to the Government survey township line between townships 24 and 25 north; thence east along said township line to Hawk Creek, in Lincoln County, Washington; thence down said Hawk Creek to its intersection with the Columbia River; thence westwardly along the south bank of the Columbia River to a point opposite the mouth of the Okanogan River; thence north across the Columbia River and up the west bank of the Okanogan River to the place of beginning; also, commencing on the north bank of the Spokane River at its junction with the Columbia River, thence in a northeasterly direction along the summit of the ridge separating the drainage basin of the Spokane River from that of the Columbia River and its tributary, the Colville River, to the main ridge of the Calispell Mountains; thence in a northerly direction along the summit of the main ridge of said Calispell Mountains, extended, to the international boundary line between said Province of British Columbia, Canada, and the State of Washington; thence west along said line to the east bank of the Columbia River; thence in a general southerly direction along said east bank of the Columbia River to the said mouth of the Spokane River; also, commenc-

ing at a point on the west bank of the Columbia River opposite the mouth of the Spokane River; thence in a general northerly direction to and along the summit of the main ridge dividing the waters of the San Poil River from those of the Columbia and Kettle Rivers, and along the summit of said ridge extended northerly to the said international boundary line between the Province of British Columbia and the State of Washington; thence west along said international boundary line to the summit of the main ridge separating the waters of the Okanogan River from those of the upper Kettle River; thence in a general southerly direction to and along the summit of the divide between the waters of said Okanogan River and those of Nespelem Creek to the north bank of the Columbia River; thence in a general easterly direction along the north bank of the Columbia River to a point opposite the mouth of the Spokane River, the place of beginning; which said lands or rights therein or thereto are claimed to have been taken away from said Indian tribes and bands, or some of them, by the United States, recovery therefor in no event to exceed $1.25 per acre; together with all other claims of said tribes or bands of Indians, or any of said tribes or bands, arising under or growing out of fishing rights and privileges held and enjoyed by said tribes and bands, or any of them, in the waters of the Columbia River and its tributaries; or arising or growing out of hunting rights and privileges held and enjoyed by said tribes and bands, or any of them, in common with other Indians in the "common hunting grounds" east of the Rocky Mountains as reserved by and described in the treaty with Blackfoot Indians, October 17, 1855 (Eleventh Statutes at Large, pages 657 to 662), and which are claimed to have been taken away from said tribes and bands, or any of them, by the United States without any treaty or agreement with such Indian claimants therefor and without compensation to them.

Sec. 2. Any and all claims against the United

States within the purview of this Act shall be forever barred unless suit or suits be instituted or petition, subject to amendment, be filed as herein provided in the Court of Claims within five years from the date of the approval of this Act, and such suit or suits shall make the said Okanogan, Methow, San Poells (or San Poil), Nespelem, Colville, and Lake Indian tribes or bands of Washington, or any of said tribes or bands, party or parties, plaintiff, and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the Indians approved in accordance with existing law; and said contract shall be executed in their behalf by a committee or committees selected by said Indians as provided by existing law. Official letters, papers, documents and records, maps, or certified copies thereof may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Indians to such treaties, papers, maps, correspondence, or reports as they may require in the prosecution of any suit or suits instituted under this Act.

Sec. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Indian tribes and bands, or any of them, but any payment or payments which have been made by the United States upon any such claim or claims shall not operate as an estoppel, but may be pleaded as an offset in such suit or suits, as may gratuities, if any, paid to or expended for said Indian tribes and bands, or any of them.

Sec. 4. Any other tribes or bands of Indians the court may deem necessary to a final determination of any suit or suits brought hereunder may be joined therein as the court may order: *Provided*, that upon final determination of such suit or suits the Court of Claims shall have jurisdiction to fix and determine a reasonable fee, not to exceed 10 per centum of the recovery, by any one of the said tribes or bands,

and in no event to exceed the sum of $25.000 for any one of said tribes or bands of Indians, together with all necessary and proper expenses incurred in the preparation and prosecution of such suit or suits to be paid to the attorney or attorneys employed as herein provided by the said tribes or bands of Indians, or any of said tribes or bands, and the same shall be included in the decree, and shall be paid out of any sum or sums adjudged to be due said tribes or bands, or any of them, and the balance of such sum or sums shall be placed in the Treasury of the United States, where is shall draw interest at the rate of 4 per centum per annum.

4. That the petitioners have, from time immemorial and since the first records by white men, lived adjacent to each other; that the Okanogan Indian tribe was and is composed of several closely related bands and families, one of which occupying the southwestern portion of the tribal territory has sometimes been referred to as and called the Methow band from the stream of that name flowing through their country; that the San Poeil (or San Poil) Indian tribe, whose name has been variously recorded and spelled, was and is also composed of related bands and families, one of which occupying the southern and southwestern portion of the tribal territory has sometimes been referred to as and called the Nespelem band, from the stream of that name flowing through their country; that the Colville Indian tribe was originally known as the Shwoyelpi, or Kettle Falls Indian tribe, and later as the "Colville" Indian tribe from the fact that the Hudson's Bay trading post, Fort Colville, was long located in their lands; that the said Colville Indian tribe was and is also composed of related bands and families, one of which occupying the tribal territory along the Columbia and Kettle rivers northward from Kettle Falls has sometimes been referred to and called the Lake Indian tribe or band.

That, as hereinafter stated, certain foreign bands of Indians, i. e. the Moses band of the Yakima Indian tribe, and the Joseph Band of the Nez Perce Indian tribe have been imposed upon and placed among the petitioners and are sometimes improperly referred to as "Colville" Indians. That said last mentioned bands of Indians are not a part of the Colville Indian tribe or of any of the petitioning bands in this action, and that neither of said Moses and Joseph bands of Indians have any interest in the claims here presented, and that the said Joseph band is now prosecuting its own claims against the defendant in action No. E-427 of the files of this Court.

The petitioners, from time immemorial and long prior to the advent of the first white explorers and fur traders into what is now known as the eastern part of the State of Washington, with the assent and acknowledgement of all other Indians having any knowledge of them and their country, had in severalty as their habitat and range and had, possessed, claimed and used as their own for fields, grazing, berry, root, fishing and hunting grounds in addition to a common participation in and use of the "common hunting ground" east of the Rocky Mountains, hereafter set forth, and without dispute by others, the region of country in the northeastern part of the present State of Washington situated and generally described as follows:

> Bounded on the North by the international boundary line between the United States and Canada at the 49th parallel of latitude; on the West and Southwest by the summit of the Cascade Mountains and the lands of the Dwamish, Suquamish and allied Indian tribes as defined by the Point Elliott Treaty of January 22, 1855 (12 Stats. 927), and the lands of the said Yakima Indian nation as defined by the Camp Stevens or Walla Walla Treaty of June 9, 1855 (12 Stats. 951); on the South by the lands of the said Yakima

Indian nation, as above defined, and the lands of the Spokane Indian tribe; and on the East by the Summit of the Calispel Mountains and the lands of the said Kalispel, or Lower Pend O'Reille Indians, as they are sometimes designated.

Attached hereto, marked Exhibit "A", and made a part hereof, is a map showing the location of the said lands so owned by the petitioners.

5. That prior to June 15, 1846 the said lands so occupied and possessed by petitioners immediately south of the 49th parallel of latitude were a subject of joint occupancy and conflicting claims between defendant and Great Britain; and that when the treaty of Washington was concluded between the defendant and her majesty, the queen of the United Kingdom of Great Britain and Ireland, on said June 15, 1846, and the defendant acquired exclusive and recognized sovereignty over the region south of said 49th parallel of latitude and the recognized fee to lands theretofore in dispute south of said international boundary line, these petitioners were then in recognized, exclusive and undisputed posession of all the lands, rights and privileges herein set forth, and the defendant's fee was, as to the actual possession of the said lands and the enjoyment of the soil and its appurtenances, charged with the existing, and continued possession, and the exclusive possessory rights to the enjoyment and use of the soil and its appurtenances, within said limits, vested in and held by these petitioners.

6. That by established precedent existing at the time of the treaty of Washington, June 15, 1846, and ever since, the defendant, United States, had, with respect to its dealings with and the rights of Indian tribes in the original occupancy of lands in this country, adopted and announced the policy and established the law:

> That such Indians had title and right to the perpetual occupancy of the lands occupied by them, with the privilege of using it in such manner as they saw fit until such right of occupancy had been surrendered to the government (*Spaulding v. Chandler*, 160 U. S. Sup. Ct. 384; 402, 403) and that such original possessory title and right to lands occupied by Indian tribes would be extinguished only with the consent of the tribes recognized as having claim to the soil by reason of their occupancy thereof (*Leavenworth L. & G. R. R. vs. U. S.*, 92 U. S. 733).
>
> Act of June 30, 1834, (4 Stats. 730).

That in the Organic Acts creating the Territories of Washington and Montana (10 Stats. 172; 13 Stats. 85) the rights, titles and interests of petitioners and of all Indians within said territories were recognized and preserved by the following provisions:

> Nothing in this title shall be construed to impair the rights of person or property pertaining to the Indians in any territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, nor to include any Territory which by treaty with any Indian tribe, is not without the consent of such tribe, embraced within the territorial limits of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any Territory now or hereafter organized, until such tribe signifies its assent to the President to be embraced within a particular Territory.

That the rights, title and interests of the petitioners, and of other Indians within said Territories were further recognized and preserved in the Organic Act (approved February 22, 1889) creating and admitting said States of Washington and Montana, by the provision therein that the people of said states disclaim all rights:

> To all lands lying within said limits owned or held by any Indian or Indian tribes; and that

until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and controll of the Congress of the United States.

7. That following ratification of treaty of Washington and the creation of Washington Territory and the extension of defendant's civil government over the said region so occupied by the petitioners these petitioners became and ever since have been and now are wards of the defendant, and under the guardianship and control of the defendant, United States. That the whole of the lands, hereinbefore described in paragraph 4 hereof, and then occupied by and in the exclusive possession of petitioners comprise approximately 7,729,040 acres; the exact survey extent of which is unknown to petitioners. That the nature and extent of petitioners' original, then existing and unextinguished fishing and hunting rights, hereafter more particularly set forth, and the nature and extent of petitioners' original, then existing and unextinguished title, possession, occupancy and use of all of the lands, described in paragraph 4 hereof, and their appurtenances, has been known to the defendant, and its Indian agents,Indian Commissioners and Indian Superintendents since the first advent of Governor Isaac I. Stevens into said region in 1853; said Stevens then holding and acting under commission from defendant as its Commissioner and Superintendent of Indian Affairs for said region.

8. That the defendant, and its said Commissioner and Superintendent of Indian Affairs, Isaac I. Stevens, in 1853 recognized and acknowledged the said original Indian possessory right and title of the petitioners, and of other Indian tribes occupying other lands, to practically all the lands within said Washington Territory, and that the defendant specially commission-

ed and instructed its said Commissioner and Superintendent of Indian Affairs, Isaac I. Stevens, to negotiate treaties with the said various Indian tribes within said Territory of Washington, for the voluntary relinquishment and cession by said Indian tribes of their possessory right, title and claims in and to a substantial part of the lands so occupied and possessed by them.

That pursuant to such instructions from defendant said Isaac I. Stevens, as Commissioner and Superintendent of Indian Affairs, did in the year 1855 negotiate and conclude treaties with most of the Indian tribes, other than petitioners, occupying and possessing lands within the boundaries, of said Washington Territory.

9. That in the treaties then so negotiated with the Yakima Indian Nation, and with the Dwamish and allied tribes the western and southwestern boundaries of the land owned, occupied and held by petitioners were recognized, and established by defendant and its said Commissioner and Superintendent of Indian Affairs, Isaac I. Stevens, and said contracting Indian parties, and that the full extent of the lands so occupied and possessed by petitioners was recognized, noted and set out by said Stevens in his maps and reports to defendant made in connection with the treaties then so negotiated.

That is was the announced purpose and intention of defendant and of said Isaac I. Stevens as Superintendent and Commissioner of Indian Affairs to likewise negotiate and conclude treaties with these petitioners, and other Indian tribes, occupying lands to the east and south of the lands occupied by the petitioners, for the relinquishment of their original, existing, recognized, and unextinguished rights and title in, to and upon a portion of the lands then in their acknowledged possession.

That a large quantity of Indian treaty supplies, gratuities and presents for such purpose were transported by said Isaac I. Stevens to Antoine Plante's place in the Spokane Valley, Washington Territory, (near the site of the present City of Spokane) for use at such proposed council, and that a council between the defendant's said Commissioner and Superintendent of Indian Affairs, Isaac I. Stevens, and the petitioners and other neighboring non-treaty Indians was planned and called for December 4, 1855, at said place.

10. That the petitioners attended said council at said Antoine Plante's place on December 4, 1855; that at said council the said rights, title and claims of the petitioners in, to and upon the said lands occupied and possessed by them and over which they roamed and hunted was recognized and conceded by said Isaac I. Stevens as Commissioner and Superintendent of Indian Affairs for defendant, and that said Stevens, as representing defendant then stated to the representatives of petitioners present in said council with respect to their said lands and rights:

> "Your rights are your rights and you shall not be deprived of them.....I, your friend say that your lands will not be taken from you..... It is my business as your friend to protect you in your lands and rights....."

That the prior outbreak of the Yakima Indian war, then in progress, and requiring Governor Stevens' immediate attention and personal presence elsewhere and the general unrest occasioned thereby, prevented a continuance of the council and the conclusion of a treaty and that the council adjourned with expressions of mutual friendship to be reconvened after the close of the Indian war. That petitioners and the other assembled Indians then furnished their own horses and arms to Governor Stevens and his ill equipped party for their journey through the hostile Indian country.

11. That various causes following in succession: the said Indian wars of 1855-1858 and the resulting disturbances and unrest; the gold mining excitements of 1855-1865; the delay in securing approval and ratification of other treaties already negotiated; the outbreak of the Civil War, etc., postponed and defeated the defendant's expressed intention to negotiate and conclude a treaty with the petitioners for the cession and relinquishment of their recognized and unextinguished possessory rights and title in, to and upon a part of the said lands occupied and possessed by them.

That at all times since 1855 the defendant, and especially its Indian Agents and Commissioners in charge of the Indian Affairs have had full knowledge of the character and extent of the said outstanding and unextinguished rights and title of these petitioners in, to and upon said lands and of the petitioners' fishing, and hunting rights and privileges. That defendant's Indian agents charged with the conduct of petitioner's affairs have repeatedly reported said matter to the Commissioner of Indian Affairs. That on several occasions the matter of mutual treaty or agreement with respect to said subject has been discussed between petitioners and representatives of defendant. That in 1873 a settlement was discussed between petitioners and defendant, but that the same failed to secure approval of Congress and that defendant is now and for years past has been wholly unable to perform the conditions then proposed by reason of defendant's own acts in granting patents and conveying to the Territory and State of Washington, and to various private persons and corporations the fee of the lands reserved and to be confirmed in petitioners by the terms of said council negotiations, and that the proposals became void and are of no binding force or effect on either party to this action.

That no other treaty or agreement has ever been

negotiated or concluded between the petitioners and defendant with respect to the rights and claims here sued on, and that petitioners said rights and title to said lands and appurtenances, with respect to which the claims are here presented, are yet unextinguished and outstanding. That up to the year 1884, or even later, defendant's Indian Agents were still reporting said fact to the Commissioner of Indian Affairs and calling attention of defendant's said Commissioner to said outstanding and existing rights and claims of these petitioners, and urging the justice, propriety and necessity for extinguishing such rights in whole or part by securing petitioners' voluntary cession or relinquishment thereof.

12. That in all the years intervening since 1855, until very recently, the petitioners have been unused to white man's ways with respect to dealings with the defendant, United States, and petitioners being poor and ignorant had no one, other than the defendant's own agents, to represent and advise them, and that for years petitioners have relied in good faith upon the promises and assurances made to them by Isaac I. Stevens, and other agents of defendant, that the defendant would protect petitioners in their said rights and lands.

That contemporary with said statements and assurances by said Stevens and other agents of the defendant in charge of its Indian Affairs, and with out extinquishing the petitioners' said title and possessory rights in, to and upon said lands, described in paragraph 4, defendant and other officers and agents of defendant invited white settlers to intrude on petitioners' lands under the "donation", "preemption", "timber culture", "homestead", and similar Acts, and defendant and its agents proceeded to survey petitioners' lands as part of the public domain of the defendant; and defendant proceeded by Act of Con-

gress to grant portions thereof to the Northern Pacific Railroad Company, to the Territory of Washington, and others, and continued to deal with said lands in all respects the same as though they were a part of defendant's public domain.

That due to their geographical situation, petitioners' said lands were off the early routes of travel from the Eastern States and remote from any thickly settled region in said Washington Territory, and consequently the petitioners were not greatly disturbed in their said possession, use and rights in their said lands until about 1882, when the completion of the Northern Pacific Railroad brought a large influx of settlers into the Territory of Washington; many of whom began settling upon the lands of these petitioners and crowding petitioners from their homes.

13. That by Executive Order of April 8th, 1872, the defendant without knowledge of petitioners created out of a portion of the lands of the petitioners, Colville and Lake Indian tribes or bands, the first Colville Indian Reservation embracing much of the best land owned by said two Indian tribes or bands in the Chewelah, Colville and Columbia River valleys and including therein the lands whereon most of said Colville and Lake Indians then resided. The fact of the creation of said Executive Order reservation was fraudulently concealed from petitioners, at the time, by defendant's Indian Agent then in charge of petitioners, to permit white settlers to protest against said Order and secure a revocation thereof without petitioners' knowledge of said matters. That on July 2, 1872, without the knowledge or consent of the petitioners the said Executive Order of April 8, 1872 was rescinded and a new Executive Order issued on July 2, 1872, creating the second Colville Indian Reservation out of the lands of the petitioners, San Poil and Nespelem Indian tribes or bands, and out of a

portion of the lands of the petitioners, Colville, Lake, Okanogan and Methow Indian tribes or bands.

That the petitioners, for whose purported benefit said Executive Order reservation was so created on July 2, 1872, were already in possession of all the lands embraced within said Executive Order of July 2, 1872, under their original, recognized, undisturbed and unextinguished Indian possessory rights and title, and that petitioners already had and held a better right and title to all the lands within the limits of said reservation than could be conferred or granted to them by defendant by said Executive Order of July 2, 1872.

Attached hereto, marked Exhibit "B"" and made a part hereof is a map showing the location and extent of that part of petitioners' original habitat included within the limits of said Colville reservation as created by the Executive Order of July 2, 1872.

The petitioners state that the defendant's President, officers and representatives acting at the time of the creation of the first Colville Indian reservation by Order of April 8, 1872 and at the time of the vacation of said Order and the creation of the second Colville Indian reservation by Executive Order of July 2, 1872, acted under the erroneous impression that the original title to the lands embraced within said orders had been extinguished and that the said lands were lawfully subject to such disposition as a part of the "public domain" of the defendant, and that they acted in ignorance of the lawful rights of the petitioners in the premises.

That the lands of the petitioners, Lake, Colville, Okanogan and Methow tribes or bands of Indians, excluded from the said Colville Indian Reservation, so created by the said Executive Order, were the most valuable lands possessed by said petitioners and the lands whereon the majority of the said petition-

ers than resided, and which they used for their principal cultivated gardens, fields, hay grounds, root, berry and fishing grounds. That the portion of the lands of the said petitioners, Lake, Colville, Okanogan and Methow Indian tribes or bands included within said Executive Order reservation of July 2, 1872 and a considerable portion of the lands of the said San Poil and Nespelem Indian tribes or bands were of gravel and sandy soil or of a broken, rocky, barren and mountainous character, little suited for agriculture, and valuable chiefly for its rock, minerals, and timber, and theretofore used principally by said petitioners for hunting, fishing and berry grounds, and for range for petitioners' horses and cattle.

14. That the petitioners never recognized, acknowledged or accepted the said Colville Indian Reservation, so created by Executive Order of July 2, 1872, as a settlement of their said rights and claims to other and more valuable lands, right and privileges then owned, held and possessed by them without the boundaries of said reservation, and in and on which most of the petitioners then had their principal habitat and home. That after July 2, 1872 these petitioners continued to use and exercise all their said lands, rights and privileges in, to and upon their lands, both without and within the limits of said Colville Indian Reservation, the same as they had previous to the issuance and promulgation of said Executive Order.

That from time to time various Indian Agents appointed by defendant in charge of the petitioners made occasional efforts to pursuade and induce the petitioners to abandon their lands and rights without said reservation and their homes, gardens, fields, and their berry grounds, root grounds, hunting and fishing grounds off said Colville Indian Reservation, but that the petitioners continued at all times to protest against the attempted injustice towards them.

and persisted in asserting their claims to, and in the full exercise of all their said title, rights and privileges in their lands without said Reservation until finally forced and driven from their said lands and rights by the threats of defendant's Indian Agents in charge over petitioners; the active and implied coercion of military force displayed by defendant, garrisoned and quartered in and upon defendants' lands: and the intrusions, threats and violence of white settlers invited into and upon petitioners' lands and encouraged and protected by defendant in a violation of all of petitioners' rights, and privileges in, and to said lands without the limits of said Colville Indian Reservation.

15. That the petitioners were and are a peaceful people; that they were and are friendly towards the whites; that they have had slight intercourse with the white men and early fur traders from about 1810, and have never been at war with the defendant and that they resisted the steadily increasing encroachments of white settlers upon their lands and rights in a patient, persistent and peaceful manner, while they were dispossessed of their homes, and fenced and cultivated fields, and threatened and assaulted, and even killed in disputes with white settlers in a peaceful effort to maintain their said title, rights and claims. That the people of Washington Territory desired petitioners' said lands and seized every pretext and opportunity to secure them and to procure the assistance of territorial and federal officials in forcing and compelling petitioners to remove from their good lands off said reservation onto the barren lands of the Colville reservation.

That between the years 1884 and 1889 most of the petitioners, except the said San Poil and Nespelem Indian tribes or bands, whose principal habitat and range has always been within the limits of said

Colville Indian Reservation, were crowded, forced and driven from, and deprived of all their ancient habitat, range, rights and privileges off said Colville Indian Reservation, and having no other place whereon they were permitted to rear their lodge poles and live in peace with defendant, its agents, military forces, and white settlers, finally took up their residence in and upon their lands within said Colville Indian Reservation.

That the said petitioners have continued at all times to protest against the injustice being done them, and to assert their lawful claims against the defendant, and that their act in finally taking refuge within the limits of said Colville Indian Reservation was a matter of necessity, that there was no other place to which defendant would permit petitioners to go or to reside, and that petitioners' said act of necessity was not intended either as an abandonment of petitioner's claims to lands and rights they were so forced to leave without the limits of said Colville Indian Reservation; or as an acceptance of their lands within said Indian Reservation as a consideration, satisfaction or release of any of their rights and claims without the limits of said Indian Reservation.

16. That these petitioners, under authority of the jurisdiction Act under which these claims are here filed and presented, and for the purpose of avoiding the expense of a multiplicity of suits against the defendant founded on their several joint and separate tribal claims against the defendant, have and do join in this one petition and in the foregoing common recital of the origin and historical development of their said claims, and now make the following detail specifications and statements with respect to their several joint and separate tribal claims:

II

Separate claims of the Lake and Colville Indian tribes or bands.

17. That the particular portion of the said lands, described in paragraph 4 hereof, lying outside of and east of the limits of the said Colville Indian Reservation so created by Executive Order of July 2, 1872, and which lands the petitioners Lake and Colville Indian tribes or bands occupied, possessed and held in severalty as part of their original, exclusive, and recognized habitat and range, as hereinbefore alleged is more particularly described as bounded by, and included within the following limits:

> Commencing on the north bank of the Spokane River at its junction with the Columbia River; thence in a northeasterly direction along the summit of the ridge separating the drainage basin of the Spokane River from that of the Columbia River and its tributary, the Colville River, to the main ridge of the Calispell Mountains; thence in a northerly direction along the summit of the main ridge of said Calispell Mountains, extended, to the international boundary line between said Province of British Columbia, Canada, and the State ow Washington; thence west along said line to the east bank of the Columbia River; thence in a general southerly direction along said east bank of the Columbia River to the mouth of the Spokane River.

That the general location and extent of said above described lands is indicated as tract (1) on the map hereto attached, marked exhibit "C" and made a part hereof. That the said lands aggregate 1,238,144 acres, more or less; the exact survey extent thereof being unknown to petitioners, but now known to the defendant.

Petitioners further state that the defendant, United States, without any treaty, or agreement with said Colville and Lake tribes or bands of Indians, or

either of them, having exclusive possessory rights and title thereto as aforesaid; without any session or relinquishment or abandonment of said rights by said Indian tribes or bands, or either of them; without the consent of said tribes or bands, or either of them, and against the will and over the protests of both of said tribes or bands; and without any compensation to them, or either of them; and without any lawful warrant appropriated to its own use, all of the said lands and appurtenances, and wrongfully deprived said tribes and bands of Indians of all their right, title and interest therein and thereto.

That the value of said lands and of the rights, and title of said tribes or bands of Indians, therein and thereto is fairly appraised at $1.25 per acre and that the terms of the said jurisdictianal act under authority of which this claim is prosecuted limit the recovery of said tribes and bands and of all the petitioners herein to the sum of $1.25 per acre, for all of the lands for which compensation is sought under this petition.

III

Separate claims of the Nespelem, (or lower San Poil), and Methow (or lower Okanogan) Indian tribes or bands.

18. That the particular portion of the lands, described in paragraph 4 hereof, lying outside of and south of the limits of the said Colville Indian Reservation as created by Executive Order of July 2, 1872, which the petitioners, Nespelem, (or lower San Poil) Indian tribe or band, and the Methow, (or lower Okanogan) band or tribe of Indians occupied, possessed and held in severalty as part of their original, exclusive and recognized habitat and range as hereinbefore alleged, is more particularly described as bounded by and included within the following limits:

Commencing at a point on the East bank of

the Columbia river at the north line of the lands of the Yakima Indian Nation as designated, fixed and ceded by the treaty of June 9, 1855 (12 Stats. 957, 958); thence in a true line course east, to a point whose longitude is one hundred and nineteen degrees and ten minutes; thence in a true south course to the Government survey township line between townships 24 and 25 north; thence east along said township line to Hawk Creek, in Lincoln County, Washington; thence down said Hawk Creek to its intersection with the Columbia River; thence westerly along the south bank of the Columbia River to the place of beginning.

That the general location and extent of the above described lands is indicated as tract (2) on the map hereto attached, marked Exhibit "C" heretofore referred to and attached hereto. That the said lands aggregate 570,000 acres, more or less; the exact survey extent thereof being unknown to petitioners but known to the defendant.

Petitioners further state that the defendant, United States, without any treaty or agreement with the petitioners, or with either the said Nespelem, (or lower San Poil tribe) and Methow, (or lower Okanogan) tribe or band of Indians, or either of them having exclusive possessory rights and title thereto as aforesaid; without any session or relinquishment or abandonment of said rights by said Indian tribes or bands or either of them; without the consent of said tribes and bands or either of them; and against the will and over the protests of both said tribes and bands; and without any compensation to them or either of them; and without lawful warrant appropriated to its own use all of the said lands and appurtenances and wrongfully deprived said tribes and bands of Indians of all their right, title and interest therein and thereto.

That the value of said lands and of the rights and

title of said tribes or bands of Indians therein and thereto is fairly appraised at $1.25 per acre, and that the recovery against the defendant herein is by law limited to $1.25 per acre for said lands, as herein before alleged.

IV

Separate claims of the Okanogan and Methow (or lower Okanogan) Indian tribes or bands.

19. That the particular portion of the said lands, described in paragraph 4 hereof, lying outside of and west of the limits of said Colville Indian Reservation so created by executive order of July 2, 1872, and which lands the petitioners, Okanogan and Methow, (or lower Okanogan) tribes or bands of Indians, occupied, possessed and held in severalty as a part of their original, exclusive and recognized habitat and range, as hereinbefore alleged, is more particularly described as bounded by and included within the following limits:

> Commencing at the intersection of the west bank of the Okanogan River with the international boundary line between the Province of British Columbia, Canada, and the State of Washington, thence west along said line to its intersection with the summit of the main ridge of the Cascade Mountains; thence in a southerly direction along the summit of said main ridge of the Cascade Mountains to a point where the northern tributaries of Lake Chelan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Chelan and the Methow River to the Columbia River; thence up the Columbia River to the influx of the Okanogan River and up the Okanogan River to the place of beginning.

That the general location and extent of said above described lands is indicated as tracts 4a, 4b, and 4c on the map attached hereto and marked exhibit "C" and made a part hereof. That the said lands aggre-

gate 1,977,500 acres, more or less; the exact survey extent being unknown to petitioners, but now known to the defendant.

Petitioners further state that the defendant, United States, without any treaty, or agreement with the petitioners, or said Okanogan and Methow tribes or bands of Indians; or either of them, having exclusive possessory rights and title thereto as aforesaid; without any cession or relinquishment or abandonment of said rights by said Indian tribes or bands, or either of them; without the consent of said tribes or bands or either of them, and against the will and over the protests of both said tribes or bands of Indians; and without any compensation to them or either of them; and without any lawful warrant, appropriated to its own use all of the said lands and appurtenances, and wrongfully deprived the said tribes and bands of all their right, title, and interest therein and thereto.

That the value of said lands, and of the rights, title and interest of said tribes or bands of Indians therein and thereto is fairly appraised at $1.25 per acre. That the defendant, United States, without lawful warrant and by Executive Orders of date April 19, 1879 and March 6, 1880, appropriated all said lands to its own use as and for a reservation for the Moses tribe of Indians; and thereafter by Executive Orders of date February 23, 1883 and May 1, 1886 without lawful warrant as respect the claims of said petitioners "restored" said lands to its public domain, and has ever since used said lands as part of its public domain without compensation to petitioners or extinguishing their said outstanding claims and title thereto.

That a statement of the facts and circumstances connected with the creation of said Moses or Columbia reservation out of the petitioners said lands, and of the subsequent restoration of said lands to defend-

ant's public domain is hereto attached and made a part of this petition, and is hereby referred to and made a part hereof as though herein set forth in *haec verba*. (See pages 40 to 50, post.)

V

Separate Claims of the San Poeils (or San Poil) and Nespelem Indian Tribes or Bands

20. That the petitioners, said San Poeils (or San Poil) and Nespelem Indian tribes or bands had, as their principal original habitat and range, in addition to the lands lying south of the Columbia River mentioned and described in paragraph 4 hereof, and held in severalty, a certain body of land described as:

> Commencing at a point on the west bank of the Columbia River opposite the mouth of the Spokane River; thence in a general northerly direction to and along the summit of the main ridge dividing the waters of the San Poil River from those of the Columbia and Kettle Rivers, and along the summit of said ridge extended northerly to the said international boundary line between the Province of British Columbia and the State of Washington; thence west along said international boundary line to the summit of the main ridge separating the waters of the Okanogan River from those of the upper Kettle River; thence in a general southerly direction to and along the summit of the divide between the waters of said Okanogan River and those of Nespelem Creek to the north bank of the Columbia River; thence in a general easterly direction along the north bank of the Columbia River to a point opposite the mouth of the Spokane River, the place of beginning.

That, within said last mentioned range and territory, the said San Poeils (San Poil) and Nespelem Indian tribes or bands resided from time immemorial. That they possessed the sole and exclusive possession and use thereof and that the Indians possessory title thereto was recognized by both their

neighbors and by the defendant and that there were no other Indian tribes or bands having, possessiong or claiming any rights or claims thereto or any part thereof. That, except the abortive negotiations held in August, 1873, between defendant's Commissioner and all the petitioners herein, no treaty or agreement or cession of said lands or any right or interest therein has ever been made by the said San Poeil (or San Poil) or Nespelem Indian tribes or bands, or either of them and that their said original Indian possessory title thereto and rights therein are yet outstanding in original strength and purity.

That, after defendant had procured the execution of the so called Moses agreement, hereinafter set out and the ratification thereof, by its Congress, the defendant, without any lawful right or warrant and without the consent of said San Poeil (or San Poil) and Nespelem tribes and bands of Indians, or either of them, and over their protest and objections, brought the said Chief Moses and said band of Moses Indians from the said Columbia Reservation and settled them upon the best lands of said petitioners, San Poeil (or San Poil) and Nespelem tribes or bands, where the said intruding Indians continue to live to the present time.

That, thereafter and in the year 1885, the defendant, in further violation of the said rights of the said San Poeil (or San Poil) or Nespelem Indian tribes or bands, brought Chief Joseph and his band of Nez Perce Indians, whose original range and habitat was in the Wallowa Valley, in the State of Oregon, and which Indians had been removed as military prisoners to Indian Territory after the close of the Nez Perce War in 1877, to Washington Territory and located them on the said lands and habitat of the said San Poeil (San Poil) and Nespelem Indian tribes or bands. That wholly without the consent of said Indian

petitioners and over their protests, said Joseph's band was settled in and upon the lands of the said San Poeil (San Poil) or Nespelem Indian tribes or bands, where said intruding Indians yet remain today.

That by further treaty with the upper and middle bands of Spokane Indians, approved July 13, 1892, (27 Stats. 139), the defendant agreed to and did locate some members of said Spokane tribes upon the said Colville reservation; all of which was without consideration to any of the petitioners and without their consent, and over their protests and in violation of their said rights.

That when said petitioners, San Poeil (San Poil) or Nespelem Indian tribes and bands peaceably and firmly objected and protested against the intrusions by defendant of said strange Indian tribes into and upon their said lands and against said violation of their lawful rights by defendant, the petitioners were compelled by defendant to submit to and suffer said intrusion and invasion of their rights by the threats of their Indian agents, by the coercion of the United States Army troops brought into and upon their said lands, and by the acts of defendant's officers and agents, purporting to act for defendant, in seizing and arresting their Chief Sko-las-kin who, without civil warrant and without civil trial, was seized, arrested and removed by defendant's Indian agents and army officers and, without any civil trial, imprisoned and confined for two years in the United States penitentiary at McNeil's Island, on Puget Sound, then Territory of Washington.

That the number of Moses Indians so intruded upon the San Poil and Nespelem lands were 316, that the number of Joseph or Nez Perce Indians so intruded upon the lands of the said petitioners were 152, an aggregate of 468; that the number of Spokane Indians so placed on petitioners' lands are unknown; that the

present aggregate number of Moses, Joseph and Spokane Indians is unknown to petitioners but petitioners allege that acording to the best of their knowledge and belief that approximately 500 Indians belong to said bands and have been given equal rights with petitioners to the petitioners original habitat and range within said Colville Indian reservation.

That each of said 500 Indians received from defendant $500.00 cash out of the $1,500,000.00 appropriated by Congress in payment of the lands in the North half of said Colville reservation, and each of said 500 Indians has received from defendant further per capita payments of $30.00 and $15.00 from distribution of funds accruing from said Colville reservation. That each of said Indians has been given by defendant an allotment of 80 acres out of the lands within said Colville reservation, which allotments are reasonably worth on an average $15.00 an acre; and that said 500 Indians have also been given by defendant a common and pro rata interest, share and part in the remaining common lands and money of said Colville reservation aggregating $5,695,908.00 on June 30, 1926; that said 500 Indians have also had the equal advantage of all supplies, and of all administration, educational, medical and other services provided on said Colville reservation for the past 42 years, which have been paid for, in substantial part, out of moneys accruing from lands within said Colville Indian reservation; wherein and whereby the petitioners have been deprived of a full enjoyment of all their rights resulting from their original and unextinguished possessory right and title in, to and upon all the lands within the limits of said Colville Indian reservation. That the direct loss to the 2317 petitioners from said matters has been and is substantially as follows:

500-80 acre allotments @$15.00 per acre	$ 600,000.00
Cash per capita payments	272,500.00
Pro rata of common Colville property	1,010,985.00
Supplies, administration, educational, medical and other services expended for their benefit out of proceeds from reservation (estimated only)	200,000.00
	$2,082,485.00

VI

Common Claim of the Petitioners for Loss of Fishing Rights and Privileges

22. That the said original range and habitat of petitioners, as set out in paragraph 4 hereof, included the waters of the Columbia river from the international boundary line south to a point about midway between the mouth of the Methow and the Chelan rivers, and included the waters of all streams flowing into said Columbia within said limits, except the Spokane river. That in their original and undisturbed condition the waters of said Columbia river and its said tributaries within said limits were literally filled with fish, including a variety commonly known as carp or suckers which annually ascended said streams in the spring to spawn, and several varieties of salmon which returned to said stream to spawn in great numbers in the spring and in the early fall.

That from time immemorial petitioners had possessed, used and enjoyed a great fishery in the Columbia river at Kettle Falls, and lesser fisheries in the San Poil, Okanogan and Methow rivers and their tributaries wherefrom they procured their principal food supply. That the said fish within said territory were in better condition to eat and to preserve for food than those taken at points higher up on the Columbia river without the range of petitioners, and that

owing to the dry air of the interior Columbia river basin within plaintiff's said habitat, said fish could be cured, smoked and dried there to much greater advantage than at points lower down said Columbia river and outside of the said habitat of petitioners: and that said fish and salmon constituted petitioners principal food, and it was the common practice and custom of petitioners in addition to catching and preserving their principal food supply from said fisheries to catch, cure, dry and preserve immense quantities of said fish for trade and barter with their neighboring tribes, and that said fisheries in addition to furnishing petitioners with more than half their subsistance, were a great annual profit to petitioners by reason of the value of said fish in trade and barter.

That these petitioners had and held a perpetual right to the use and enjoyment of said streams and of their said original and natural fishing rights and fish and food supplies in an undisturbed and undiminished condition, and that, as such, the said fish resources of the Columbia were capable of continually supporting all the Indian tribes living along its course and accustomed to fish therein; provided that fish were removed in the customary manner, and that no great or unnecessary waste was committed, and the customary numbers of fish were permitted to assend said Columbia river to spawn. That following the creation of Washington Territory and the settlement of Washington and Oregon a large number of white men have invaded the waters of the said Columbia river and through the introduction of seines, fish wheels, fish traps and other devices have caught and removed from said Columbia river at and near its mouth such immense quantities of salmon that for the past fifty years but few fish have been permitted to escape up the said river to spawn, and that since the year 1877 the said quantity of fish in said streams has been

diminished fully 98% and the said fishing rights and privileges held and enjoyed by the petitioners in the waters of the Columbia river and its tributaries have been lost and impaired to more than 98 per cent of their original production and value, and the petitioners have thereby been yearly deprived of more than half their annual food supply and of their principal product for barter and trade.

The petitioners state that their said natural fishing rights were a privilege incident to their possessory rights and, that they had the perpetual right of taking fish from said streams and that it was the duty of defendant at all times to protect and insure to these petitioners in the full, natural and undisturbed enjoyment of said fishing rights, and that said rights have never been relinquished by petitioners or any of them, nor have the petitioners, or any of them ever received any compensation therefore.

That the petitioners have no records or any census of the number of individuals in their respective tribes and bands for the past fifty years, and that petitioners have no exact data as to the precise number of persons now entitled to membership in their respective tribes and bands, the said matters having been a matter of particular attention of the defendant and its Department of Indian Affairs but these petitioners allege that to the best of their knowledge and belief the number of persons entitled to membership in the petitioning tribes for the past fifty years has been and now is approximately 2800 persons. That the said fishing rights and privileges were and are reasonably worth to the petitioners for food and barter an average of one hundred dollars per tribal member per year, or an annual value to petitioners of $280,000.-00, or an aggregate fair value to the petitioners for said fishing rights and privileges of $5,600,000.00;

computing a capital value on said annual return at the rate of 4% per annum.

VII

Claims for Compensation for Loss of Rights in "Common Hunting Ground" East of the Rocky Mountains at the Head Waters of the Missouri River

23. All of these petitioners claim that, from time immemorial, the plains on the east side of the Rocky Mountains, at the head waters of the Missouri River had been the range for countless herds of buffalo, antelope, deer and other game and fur bearing animals, wherein the Indians in the upper Columbia River basin, including these petitioners, had, from time immemorial held, enjoyed and exercised a common hunting right, and from which these petitioners have procured a substantial part of the food, and clothing they customarily used.

That the fact of said common occupation and use of said "common hunting ground" became known to defendant, and its said superintendent and Commissioner of Indian Affairs, Isaac I. Stevens, at the time of and in the course of the negotiations of his various treaties with the several Indian tribes lying on both sides of the Rocky Mountains, during the year 1855, and that it was the intention of the said Stevens, as representing the defendant, and of other various Indian tribes negotiating and intending to negotiate treaties with the defendant, to recognize and preserve the said "common hunting rights" and privileges of the various tribes theretofore and then using and enjoying said hunting privileges, rights and possession in and upon said "common hunting ground".

That, in negotiating the so called Blackfoot Treaty at Fort Benton on October 17, 1855 (11 Stats. 657-658), it was stipulated and agreed in Article 3 thereof:

> The Blackfoot Nation consents and agree that all that portion of the country recognized and defined by the treaty of Laramie as Blackfoot territory, lying within the lines drawn from Hell Gate or Medicine Rock passes in the main range og the Rocky Mountains, in an easterly direction to the nearest source of the Muscle Shell River, thence to the mouth of Twenty-five Yard Creek, thence up the Yellow Stone River to its northern source, and thence along the main range of the Rocky Mountains, in a northerly direction to the point of beginning, shall be a common hunting ground for ninety-nine years, where all the nations, tribes and bands of Indians, parties to this treaty, may enjoy equal and uninterrupted privileges of hunting, fishing and gathering fruit, grazing animals, curing meat and dressing robes. They further agree that they will not establish villages, or in any other way exercise exclusive rights within ten miles of the northern line of the common hunting ground, and that the parties to this treaty may hunt on said northern boundary line and within ten miles thereof."

That, for the purpose of recognizing and protecting the rights of these petitioners and other western Indian tribes then treating, and intending to treat, with defendant, it is further stipulated and provided in said treaty:

> "That the rights of western Indians to a whole or a part of the "common hunting ground" derived from occupancy and possession shall not be affected by this article except so far as said rights may be determined by the Treaty of Laramie."

and that these petitioners assert and claim that they are a portion of the "western Indians" referred to in said provision of said treaty and whose rights are so mentioned, recognized and preserved.

That the location and general extent of said "common hunting grounds" hereinbefore referred to, is shown and indicated by the colored portion of the

map, plaintiff's Exhibit "D", which is herein referred to and made a part hereof; that the intent to so reserve said lands as aforesaid was further set out in that portion of said treaty confirming possessory rights of the contracting Indian parties by the stipulation, "subject, however, to provisions in the third article of this treaty giving right to hunt."

That the common hunting ground, described in Article III of the treaty of October 17, 1855, was intended by the defendant, and understood by the Blackfoot and other contracting parties, to be set aside to provide both the said treaty tribes, and other tribes who were permitted access thereto, including these petitioners, with fresh, dried and smoked meat and other food and subsistence for themselves and their animals, with skins with which to make tents and clothing, and with all other materials necessary for their support and care for a period of ninety-nine years; that said "common hunting ground" was, at the time of said treaty, rich in game, fruits, fur-bearing animals, pasturage for animals, and all other means of subsistence necessary for the support of the petitioners while using the same, and as such was capable of supporting the various tribes of Indians who were permitted access thereto, for the period of ninety-nine years, provided that no great or unnecessary waste was committed within said hunting ground; that fur-bearing animals were abundant within said hunting ground, and could provide petitioners, in addition to subsistence, a great annual profit by reason of the value of their furs and peltries in the fur trade.

That shortly after the treaty of October 17, 1855 was concluded, large numbers of prospectors, miners, hunters, and other whites, invaded the "common hunting ground" and, on account of the rich mineral deposits discovered and the abundance of game and fur-

bearing animals, continued to come into said territory in large numbers and prosecute mining, hunting and trapping and the wholesale slaughter of buffalo for meat and hides to such an extent as to deprive your petitioners and all other Indians of their entire property rights in said "common hunting ground" from within four years from the date of said treaty and to inflict great loss and damage upon your petitioners. That it was defendant's duty to protect petitioners' said hunting rights. That said hunting rights have never been relinquished by the petitioners or any of them, nor have they ever received any compensation for the loss thereof.

That said "common hunting ground", of which your petitioners were deprived, in a manner above set forth, was annually visited by and used by two hunting parties from the petitioning tribes, one in the spring, the other in the fall and winter, and as such was of the reasonable value to your petitioners as follows:

A fair average use value of twenty-five dollars a year for each of the said 2300 members composing the petitioning tribes, or an annual use value to petitioners of $57,500.00; or an aggregate fair value to petitioners of said hunting rights and privileges for the remainder of said 99 year period of $939,990.00; computing a capital value of said annual return at the rate of 4% per annum.

24. That your petitioners have continued at all times to protest against the injustice done them and their lawful rights and claims against the United States as hereinbefore set forth, and that no relinquishment, abandonment, cession or release thereof has ever been given by them or either of them and no satisfaction, or consideration has ever been received by them, or any of them therefor; and that the petitioners, San Poeil (or San Poil) and Nespelem Indian tribes or bands,

for the purpose of preserving their rights and record title intact, wholly refused to participate in, sign or to be parties to the agreements, signed by others of the said petitioners, for the subsequent sale and opening of their lands on said Colville reservation to settlement.

That the petitioners do not know and are unable to determine the amount of money appropriated, expended and used by defendant for the benefit of petitioners and which may be offset against their claims.

That your petitioners do not know, and that they have been unable to ascertain the amount of gratuities which the defendant is entitled to claim as an offset against petitioners' claims. That the fair and reasonable value of all lands of petitioners as hereinbefore described is $1.25 per acre. That the quantity of lands to which the petitioners were entitled and which were taken for the use and benefit of the United States, and the value of petitioners said claims are as follows:

Lake and Colville tribes or bands, east of the Columbia river and the Colville Indian reservation 1,238,144 acres

Nespelem and Methow tribes or bands, lands south of the Columbia river and the Colville Indian reservation 570,000 acres.

Okanogan and Methow tribes or bands, lands west of the Okanogan river and the Colville Indian reservation 1,977,500 acres.

Total 3,485,644 acres at $1.25 per acre or $4,351,055.

San Poeil (or San Poil) and Nespelem Indian tribes or bands for invasion of rights and lands within the Colville Indian reservation: $2,090,985.00. All the petitioners for loss of fishing rights and privileges, $5,600,000.00; and for loss of hunting and other rights in the "common hunting grounds", $939,999.90.

Wherefore, and by reason of the premises aforesaid,

the Okanogan, Methow, San Poeil (or San Poil), Nespelem, Colville and Lake Indian tribes or bands, of the State of Washington (commonly known as the Okanogan and Colville tribes of Indians), sue the United States for an accounting and claim of the United States, $13,048,039.90, without interest, and pray this Court to render judgment in favor of the petitioners against the defendant in such sums as upon a full and final accounting shall be found due, and for such further and other relief as may be proper both at law and in equity; and that the court decree the fee or fees to be paid the attorney representing petitioners, as provided in the said jurisdiction act and for petitioners costs, to be taxed by the court.

The Okanogan, Methow, San Poeil (or San Poil), Nespelem, Colville and Lake Indian tribes or bands of the State of Washington, (commonly known as the Okanogan and Colville tribes of Indians),

Petitioners,

By their Attorney of Record,

William S. Lewis.

United States of America
State of Washington } ss:
County of Spokane

William S. Lewis, being first duly sworn on oath, deposes and says: That he is the attorney of Record for the Okanogan, Methow, San Poeils (or San Poil), Nespelem, Colville and Lake Indian tribes or bands of the State of Washington, being employed under contract between said Indians (commonly known as the Okanogan and Colville tribes of Indians), and said William S. Lewis which contract has been duly approved by the Commissioner of Indian Affairs and the Secretary of the Interior as provided by law; that affiant has read the foregoing petition herein subscribed and that affiant verily believes the facts stated in the foregoing petition to be true to the best of his knowledge, information and belief.

William S. Lewis.

Subscribed and sworn to before me, a notary public in and for the State of Washington, this 22nd day of March, 1927.

Joseph Rosalow,
Notary Public.

May 14, 1928.
My commission expires

NOTARY
SEAL

Petitioners' Supplemental Statement

Of the facts and circumstances surrounding the creation of the Moses or Columbia reservation out of the petitioners' lands, and defendant's subsequent transfer of said lands to its public domain.

Supplementing the allegations relating to the separate claims of the Okanogan and Methow tribes, or bands, of Indians as set forth in subdivision IV hereof, said petitioners further state:

I

The Columbia, or Moses, Indian Reservation

1. That from time immemorial certain bands of Indians, variously named or called the Pisququose, the Ko-wah-chins, the Sin-kaoo-ish (Sin-kiuse), the Isle de Pierre, the Rock Island, and, in later years, the Columbia or Moses band of Indians had as their original habitat and range certain lands in the coulees and plains on the east bank of the Columbia River in the then Territory of Washington, from La-cos-tum (Saddle Mountain) near the present town of Beverly, northward beyond "Rock Island" to Lake Chelan and its tributaries: said habitat and range being wholly outside of and south of the habitat and range of the petitioners, and the location thereof generally indicated as tract 3 in petitioner's Exhibit "C" attached hereto. That said tribe, hereafter referred to as the "Moses band" of Indians were a turbulent, warlike people; allied to and a part of the great Yakima Indian nation; that in the years 1877-1883 the principal chief of said band was one Que-tal-a-kin or Moses, the son of a noted war chief of said tribe, a reputed cousin of Chief Joseph of the Nez Perce tribe, and married to a daughter of Owhi of the Kittitas Yakima tribe or band. That said chief Moses was a man of question-

ed character, reckless morals, and of great prestige and influence, both by reason of his said family connections and his own personality, superior intelligence and ability, and that said Chief Moses attracted and gathered into his said band the so called "renegade Indians" from the various Yakima tribes or bands.

That said tribe or band of Indians, now known and hereafter referred to as the Moses band, had been present at and had participated in and been parties to the Camp Stevens treaty negotiated between the defendant and said Yakima Indian nation in the Walla Walla valley in June 9, 1855 (12 Stats. 951) and by the terms of said treaty had ceded their said habitat and lands to defendant, but that after the ratification of said treaty said band refused to remove to the Fort Simco or Yakima Indian Reservation with the other Yakima bands and thereafter continued to reside in and occupy their said original habitat, and became a cause of concern to defendant's Indian Office. That at the time of the Nez Perce War of 1877 and thereafter the said Moses band of Indians was restless and arrogant, and that members of said tribe were suspected of complicity in the murder of white settlers and the band and their said chief, Moses, became a source of friction with white settlers and serious concern to the defendant.

2. That on April, 19, 1879 the defendant, United States, for the purpose of removing said Moses band further from immediate contact with white settlers; preventing possible hostilities; and to conciliate said chief Moses and his band and insure their good conduct, by Executive Order on said day created and set aside for said chief Moses and his band of Indians the Columbia Indian Reservation, designating therefor the lands bounded as follows:

> Commencing at the intersection of the 40-mile limits of the branch line of the Northern Pacific

railroad with the Okanogan River; thence up said river to the international boundary line between the U. S. and British Columbia; thence west on said boundary line to 44 deg. W. longitude from Washington; thence south on said meridian to its intersection with the 40-mile limits of the branch line of the Northern Pacific railroad; and thence with the line of said 40-mile limits to the place of beginning.

That the major portion of said lands so set apart were part of the original habitat and range of the petitioners, Okanogan and Methow Indian tribes or bands and their location is indicated as tracts 4a and 4b in petitioner's Exhibit "C" attached hereto, and the only portion thereof which was public domain and which defendant had the right to grant and set apart for the use and benefit of said Chief Moses and his band was the small portion of said lands lying west of the said range and habitat of said petitioners, Okanogan and Methow Indian tribes or bands, and indicated in separate color in petitioners said Exhibit "C".

That thereafter on March 6, 1880, the defendant by further Executive Order set apart as an addition to the Columbia Reservation a further tract of land, designated herein as tract 4c on the map attached hereto marked Exhibit "C". That the most of said lands included in said addition to said Columbia reservation were a further part of the original habitat and range of the petitioners, Okanogan and Methow tribes or bands of Indians. That the lands described in said Executive order are:

Commencing at a point where the S. boundary line of the reservation created for Chief Moses and his people by Executive Order dated April 19, 1879, intersects the Okanogan River; thence down said river to its confluence with the Columbia River; thence across and down the east bank of the Columbia River to a point opposite the

river, forming the outlet to Lake Chelan; thence across said Columbia River and along the S. shore of said outlet to Lake Chelan; thence following the meanderings of the S. bank of said Lake to the mouth of Shehakin creek; thence up and along the S. bank of said creek to its source; thence due W. to 44 degrees longitude W. from Washington; thence N. along said meridian to the S. boundary of the reservation created by Executive order of April 19, 1879; thence along the south boundary of said reservation to the place of beginning.

That the only portion of said lands which was public domain and which the defendant had the right to grant and set apart for the use and benefit of said Chief Moses and his said band was the small portion of said lands lying southwest of said range and habitat of said petitioners, Okanogan and Methow Indian tribes and bands, and indicated in separate color in petitioner's said Exhibit "C".

That the said Executive Orders were made without the knowledge or the consent of said petitioners, the Okanogan and Methow tribes or bands of Indians, and against their will, and the said Orders were made without any treaty or relinquishment by them of their said rights, or any compensation to the said Okanogan and Methow tribes or bands, and without any lawful warrant. That pursuant to said Executive Order defendant moved said Moses band of Indians from their said original habitat and range, into and upon the lands embraced within the boundaries of said Columbia Indian Reservation, and the defendant appropriated for its own use and that of said Moses band of Indians the said original range and habitat of the said petitioners, the Okanogan and Methow tribes or bands of Indians; all of which petitioners allege was done in violation of the lawful rights of the said petitioners to the said soil and its occupancy under the laws of the United States and was con-

trary to the established Indian policy of the United States.

3. That thereafter some valuable mineral lands being discovered within the northern limits of said tract, by Executive Order of February 23, 1883 the President restored to the public domain the northern portion of said Columbia reservation, towit that portion indicated as tract 4a in the Exhibit "C" attached to this petition, and described as follows:

> Commencing at the intersection of 44 degrees W. longitude from Washington, with the boundary line between the U. S. and British Columbia; thence due S. 15 miles; thence due east to the Okanogan River; thence up said river to the boundary line between the U. S. and British Columbia; thence W. along said boundary line to the place of begining.

That said lands comprised 749,200 acres.

That pursuant to said Executive Order of February 23, 1883 the defendant appropriated said last described lands to its own use as part of its public domain, and these petitioners state that in so far as the said Okanogan and Methow tribes or bands of Indians are concerned both said grant of said Columbia reservation to said Moses tribe, and said withdrawal and restoration of said tract last mentioned to the public domain were in violation of, and void as respects, the then existing possessory rights and unextinquished Indian title of said petitioners thereto.

4. That in June 1883 the defendant having further trouble with said Chief Moses and his band, the defendant instructed one of its army officers, Capt. F. D. Baldwin of the 5th U. S. Infantry to bring said Chief Moses, together with Sar-aarp-kin, chief of an Okanogan band then living near Loomis, and two Indians from bands affiliated with the petitioners, towit: one Tonasket and one Lot, to Washington, D. C. for a conference. Thereafter on July 2, 1889, following a talk

and conference at Washington D. C. by defendant's then Secretary of the Interior, and Commissioner of Indian Affairs with said Chief Moses and the other Indians, Sar-sarp-kin, Tonasket and Lot, the following memoranda or agreement of said conference was reduced to writing and signed by all said partes except said Lot, towit:

"AGREEMENT WITH THE COLUMBIA AND COLVILLE, 1883

July 7, 1883,—Ratified July 4, 1884, 23 Stat., 79.

In the conference with chief Moses and Sar-sarp-kin, of the Columbia reservation, and Tonasket and Lot, of the Colville reservation, had this day, the following was substantially what was asked for by the Indians:

Tonasket asked for a saw and grist mill, a boarding school to be established at Bonaparte Creek to accommodate one hundred pupils (100), and a physician to reside with them, and $100 (one hundred) to himself each year.

Sar-sarp-kin asked to be allowed to remain on the Columbian reservation with his people, where they now live, and to be protected in their rights as settlers, and in addition to the ground they now have under cultivation within the limit of the fifteen miles strip cut off from the northern portion of the Columbia reservation, to be allowed to select enough more unoccupied land in severalty to make a total of Sar-sarp-kin or four square miles, being 2,560 acres of land, and each head of a family or male adult one square mile; or to move on to the Colville Reservation, if they so desire, and in case they so remove, and relinquish all their claims to the Columbia Reservation, he is to receive one hundred (100) head of cows for himself and people, and such farming implements as may be necessary.

All of which the Secretary agrees they should have, and that he will ask Congress to make an appropriation to enable him to perform.

The secretary also agrees to ask Congress to make an appropriation to enable him to purchase for Chief Moses a sufficient number of cows to furnish each one of his band with two cows; also to give Moses one thousand dollars ($1,000) for the purpose of erecting a dwelling-house for himself; also to construct a saw mill and grist mill as soon as the same shall be required for use; also that each head of a family or each male adult person shall be furnished with one wagon, one double set of harness, one grain cradle, one plow, one harrow, one scythe, one hoe, and such other aggricultural implements as may be necessary.

And on condition that Chief Moses and his people keep this agreement faithfully, he is to be paid in cash, in addition to all of the above, one thousand dollars ($1,000) per annum during his life.

All this on condition that Chief Moses shall remove to the Colville Reservation and relinquish all claim upon the Government for any situate elsewhere.

Further, that the Government will secure to Chief Moses and his people, as well as to all other Indians who may go on to the Colville Reservation and engaged in farming, equal rights and protection alike with all other Indians now on the Colville Reservtion, and will afford him any assistance necessary to enable him to carry out the terms of this agreement on the part of himself and his people. That until he and his people are located permanently on the Colville Reservation, his status shall remain as now, and the police over his people shall be vested in the military, and all money or articles to be furnished him and his people shall be sent to some point in the locality of his people, there to be distributed as provided. All other Indians now living on the Columbia Reservation shall be entitled to 649 acres, or one square mile of land, to each head of family or male adult, in the possession and ownership of which they shall be guaranteed and protected. Or should they move on to the

Colville Reservation within two years, they will be provided with such farming implements as may be required, provided they surrender all rights to the Columbia Reservation.

All of the Foregoing is upon the condition that Congress will make an appropriation of funds necessary to accomplish the foregoing, and confirm this agreement; and also, with the understanding that Chief Moses or any of the Indians heretofore mentioned shall not be required to remove to the Colville Reservation until Congress does make such appropriation, etc.

H. M. Teller
Secretary of Interior,
H. Price
Commissioner of Indian Affairs
Moses (his x mark),
Tonasket (his x mark,
Sar-sarp-kin (his x mark.
George (his x mark) Hereing.
J. L. Sherwood,
Interpreter for the Government.
Mark D. Baldwin,
Captain, Fifth Infantry.

That said memoranda or agreement was thereafter presented to and ratified by Congress on July 4, 1884 (23 Stats. 79).

5. That thereafter by Executive Order on May 1, 1886 the defendant restored "to the public domain" the 2,243,040 acres of land theretofore embraced in said diminished Columbia reservation, and appropriated to its own use all of said lands. That said restoration of said lands to the public domain was ineffectual for any purpose as respects the then existing and unextinguished possessory rights and Indian title of said petitioners, Okanogan and Methow tribes or bands of Indians in, to and upon said lands.

Petitioners state that the defendant's President, officers and representatives acting at the time of the

creation of the said Columbia reservation by Executive order of April 19, 1879, and of the Executive Order of March 6, 1880, creating said addition to said Columbia reservation, and at the time of the said Executive Order of February 23, 1883 restoring the north fifteen miles of said Columbia reservation "to the public domain", and at the time of said negotiation and ratification of said Moses agreement for relinquishment rights in said Executive Order Columbia reservation, and at the time of the said Executive Order of May 1, 1886, restoring said lands to "the public domain" were uninformed as to the petitioners' landed rights, and prior and unextinquished Indian title in, to and upon all the lands affected by said Orders, and petitioners further state that at all said times defendant, its President, officers and agents acted under the erroneous impression that the original Indian title to all said lands had been extinguished and that said lands were at said times a lawful subject of such disposition as a part of "the public domain" of the defendant.

Your petitioners state that their rights should not be affected by, nor should they in any way be bound or prejudiced by said Moses agreement for the reason: that your petitioners were not consulted about said conference and that no tribal councils of the petitioners were called or held prior to the departure of said four Indians for Washington, D. C. and that none of said four Indians had any right, authority or delegated authority to speak for or to bind any of the petitioning tribes or bands of Indians. Petitioners further state that said agreement was never presented to or ratified by them, or any of them.

That Sar-sarp-kin was a chief or leading man of a small band of Okanogan Indians then living on their original habitat west of the Okanogan River, that he had no official power or delegated authority to

bind even the members of his own band, and that in signing said memoranda he did not understand that he was doing more than affirming his expressed desire to be "allowed to remain" where he "now lived". That said Sar-sarp-kin never moved on to the Colville reservation or relinquished the claims of himself and his band to lands in the Columbia reservation.

Your petitioners further state that of the two said Indians described as "of the Colville Reservation" Lot was a Spokane Indian, took no part and did not sign agreement; and that Tonasket's participation was solely limited to a statement of the needs of himself and his immediate tribe. That neither said Lot, Tonasket or Sar-sarp-kin understood, assented to or meant to cede, relinquish or abandon the tribal rights and claims of the Okanogan and Methow tribes and bands to their said original Indian possessory rights and unextinguished title to their lands, theretofore granted to the Moses tribe by the defendant, nor did either of the said Indians consent that said Moses tribe be given any rights in the petitioner's original habitat and lands lying within the limits of the Colville Reservation.

The petitioners further state that the negotiations and agreement, evidenced by said memoranda, with respect to relinquishment of rights on the said Columbia reservation, were had principally between the defendant's said representatives, and Moses of the Columbia reservation and that the defendant's said Secretary and Commissioner, then conducting said negotiations, then acted under the assumption that petitioners had no rights within said Columbia reservation and that no consent from petitioners was necessary to enable defendant to confer upon members of said Moses band and other Indians whom defendant might see fit to place thereon an equal right with petitioners in the lands within the limits of said Colville reservation,

Your petitioners, with respect to said Moses agreement, further represent and state that at said time these petitioners were the wards of the defendant, and then entitled to such just and fair treatment as the defendant owed to an ignorant, dependent people under its care and protection, and neither said Lot who attended, nor said Tonasket and Sar-sarp-kin, who signed said memoranda could read or write English. and that as to these petitioners said memoranda should not be construed or held as any binding relinquishment of their rights in 1,877,500 acres of their original habitat lying west of the Okanogan river, or as a grant or cession to said Moses tribe or any other Indians of equal rights in and to petitioners' original habitat east of the Okanogan river, embraced within the limits of the Colville Indian reservation, and these petitioners state that said agreement is, as respects these petitioners, indefinite in its terms, obscure as to its meaning, and lacking in any fair or adequate consideration to be binding on these petitioners, and petitioners state that the said Moses agreement is as to them and their rights, void and of no effect.

The Okanogan, Methow, San Poeil (or San Poil), Nespelem, Colville and Lake Indian tribes or bands of the State of Washington, (commonly known as the Okanogan and Colville tribes of Indians),

Petitioners,

By their Attorney of Record,

William S. Lewis.

United States of America)
State of Washington) ss:
County of Spokane)

William S. Lewis, being first duly sworn on oath, deposes and says: That he is the attorney of Record for the Okanogan, Methow, San Poeils (or San Poil), Nespelem, Colville and Lake Indian tribes or bands of the State of Washington, being employed under contract between said Indians (commonly known as the Okanogan and Colville tribes of Indians), and said William S. Lewis which contract has been duly approved by the Commissioner of Indian Affairs and the Secretary of the Interior as provided by law; that affiant has read the supplemental statement herein subscribed and that affiant verily believes the facts stated in the foregoing statement to be true to the best of his knowledge and belief.

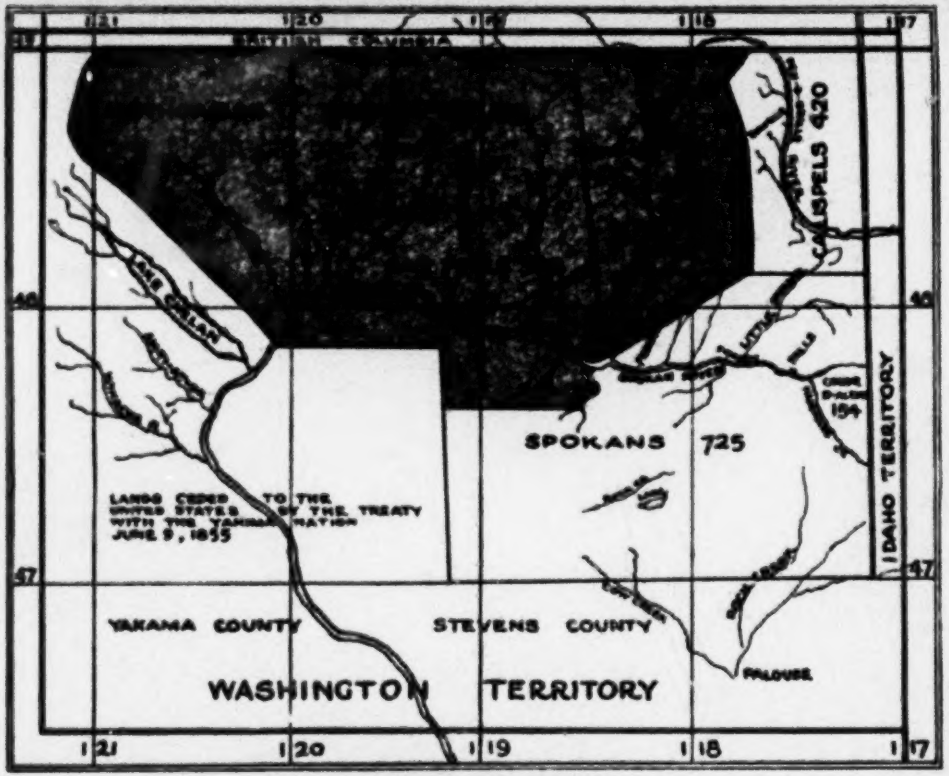
William S. Lewis.

Subscribed and sworn to before me, a notary public in and for the State of Washington, this 22nd day of March, 1927.

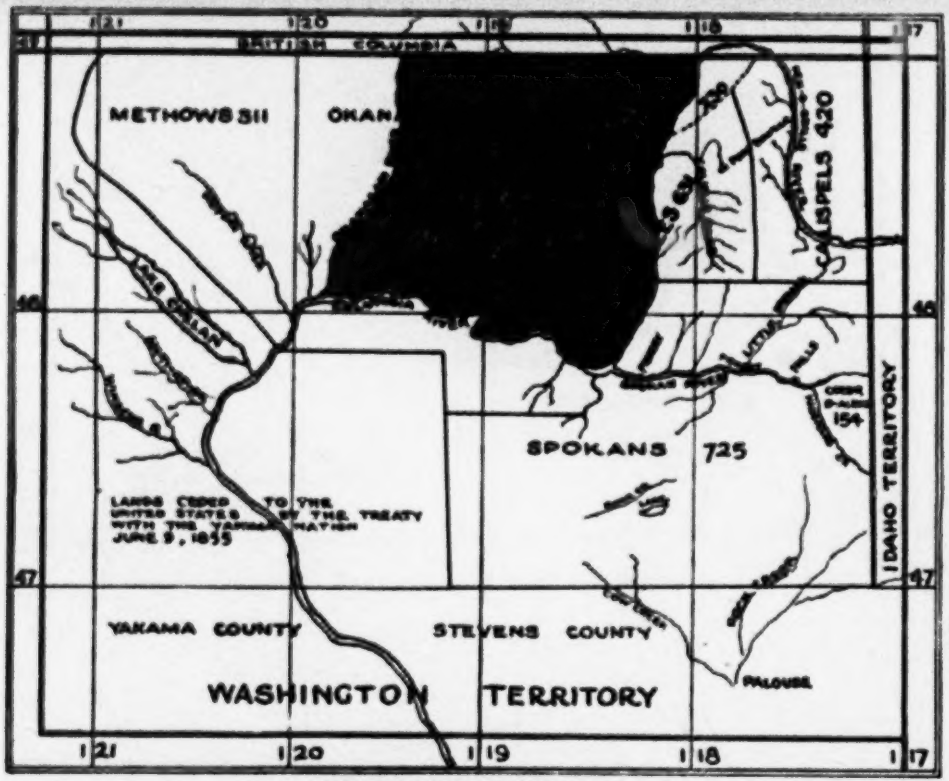
Joseph Rosslow,
Notary Public.

May 14, 1928.
My commission expires

NOTARY SEAL

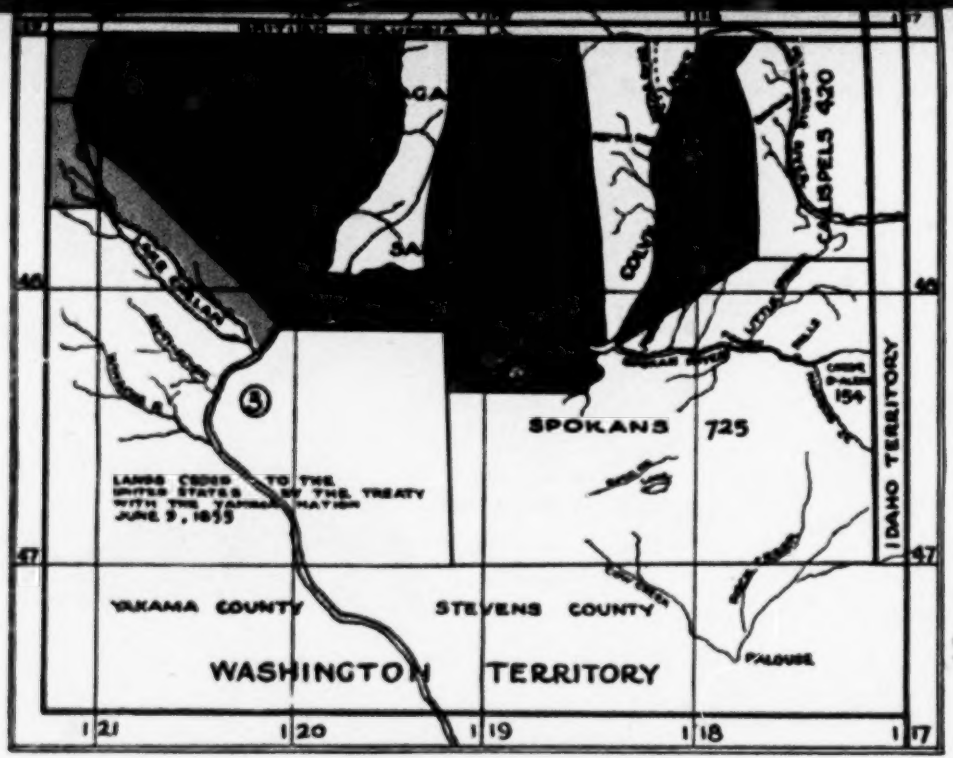


PETITIONERS' EXHIBIT "A"



PETITIONERS' EXHIBIT "8"

Map of N. E. portion of Washington showing in red that portion of the original habitat and range of the petitioners, Okanogan, Methow, San Poeil (or San Poil), Nespelem, Colville and Lake Indians included in the Colville Indian reservation credited by Executive order July 2, 1872



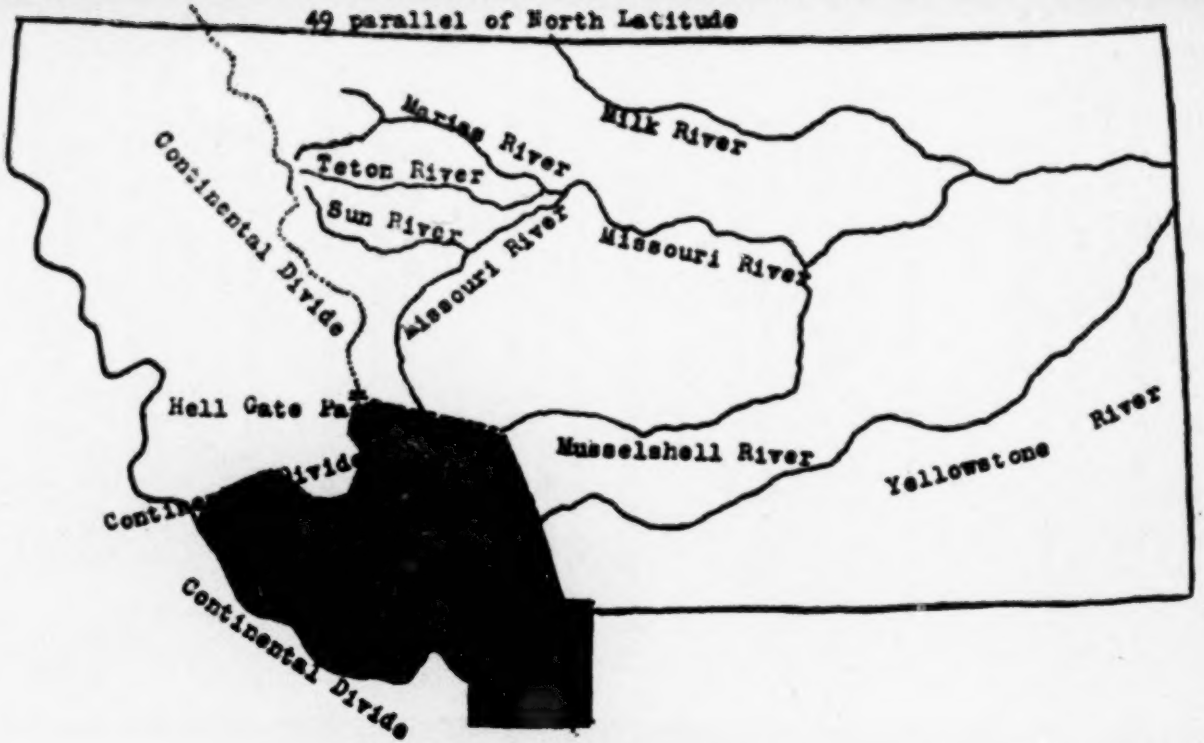
PETITIONERS' EXHIBIT "C"

Map of N. E. portion of Washington showing in red the various portions of petitioners' habitat and range outside the limits of the Colville reservation, appropriated by defendant without treaty or compensation, for which compensation is here claimed:

1. Lands for which the Colville and Lake tribes or bands ask compensation.
2. Lands for which the Nespelem and Methow tribes or bands ask compensation.

4a, 4b, 4c. Lands for which the Methow and Okanogan tribes or bands ask compensation.

5. Lands for which the San Poil and Nespelem tribes or bands ask compensation.



PETITIONERS' EXHIBIT "D"

Map of Montana showing the "common hunting grounds" established and reserved by Article 3, treaty of Oct. 17, 1855, in use of which petitioners participated, and for loss of which they claim compensation.

[fol. 60] II. History of Proceedings

On May 7, 1927, the defendant filed a general traverse to the plaintiffs' petition.

On June 28, 1927, the defendant filed a motion for leave to file a demurrer. This motion was allowed on July 6, 1927, and the demurrer filed.

III. Demurrer—Filed July 6, 1927

Now comes the Assistant Attorney General and demurs to the petitioner in the above-entitled cause for the reason that the same is not within the jurisdiction of the Court.

Herman J. Galloway, Assistant Attorney General.
George T. Stormont, Attorney.

IV. Argument and Submission of Demurrer

On January 9, 1928, this case was argued and submitted on demurrer by Mr. George T. Stormont, for the defendant, and by Mr. William S. Lewis, for the plaintiffs.

[fol. 61] V. **Opinion of the Court by Campbell, Ch. J., on Defendant's Demurrer**—Filed April 16, 1928

Campbell, Chief Justice, delivered the opinion of the court:

A petition was filed March 28, 1927, by the Okanogan and other tribes or bands of Indians alleging that the suit is brought under authority of an act of Congress described as Senate bill No. 3185, 69th Congress, 1st session, entitled "An act authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims." A copy of this alleged act appears in the petition. It is further al-

leged that this bill having been duly passed by both Houses of Congress, on June 23, 1926, was signed by the presiding officers thereof and "duly attested as by law required" and thereafter, on June 24, 1926, was duly presented to the President of the United States, and that "the said bill not being returned by the President within 10 days after it was so presented to him, or at all, the same became and now is a law in like manner as if he had signed it." The demurrer presents the one question whether in the circumstances stated the bill ever became a law.

Article I, section 7, clause 2, of the Constitution of the United States is as follows:

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States. If he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. * * * If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment prevent its return, in which case it shall not be a law."

The bill was presented to the President on June 24, 1926. On July 3, 1926 (eight days thereafter, Sunday excepted), there was a final adjournment of the first session of the 69th Congress. The President did not approve or sign the bill. He did not make any return of it to either House. He did not deposit it with the Secretary of State as a law. When the 69th Congress reconvened in its second session [fol. 62] on December 6, 1926, no return of the bill or of objections thereto had been or was made. These facts, it is urged for the plaintiffs, caused the bill to become a law. The Government contends to the contrary. The exact question it is conceded has not been decided by the Federal courts, but with great industry counsel for the parties have produced historical precedents and decisions by State courts supposed to bear upon or decide similar questions.

Under the provision quoted a bill which shall have passed the two Houses of Congress shall, before it become a law, be presented to the President. "The only duty required of the President, by the Constitution in regard to a bill which he approves, is that he shall sign it. Nothing more. * * * Even in the event of his approving the bill, it is not required that he shall write on the bill the word approved, nor that he shall date it." Gardner v. Collector, 6 Wall. 499, 506. If the bill shall not be returned by him within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it. "Here are two courses of action by the President in reference to a bill presented to him, each of which results in the bill becoming a law. One of them is by signing the bill within ten days and the other is by keeping it ten days and refusing to sign it. * * * Yet, in the latter case, no evidence is required of the President, either by the Constitution or in actual practice, to show that he had ever received or considered the bill." Gardner v. Collector, supra. But if the President does not approve the bill, he shall return it with his objections, and he has ten days (Sundays excepted) within which this duty may be discharged. It seems to us that these provisions are not intended to make the President a part of the law-making power, because Article I, section 1, of the Constitution provides that "all legislative powers herein granted shall be vested in a Congress of the United States" which shall consist of a Senate and House of Representatives. See Burton v. United States, 202 U. S. 344, 367. They do not confer the power of peremptory veto though the term veto is now generally applied to a return of a bill by the President "with his objections." Story gives reasons why the President "should possess a qualified negative." Sec. 884, et seq. And Chancellor Kent says: "A qualified negative answers all the salutary purposes of an absolute one, for it is not to be presumed that two-thirds of both Houses of Congress on reconsideration * * * will ever concur in any unconstitutional measure." 1 Kent's Com. 255. In Weil's case, 29 C. Cls. 523, Judge Nott enters upon a lengthy discussion of the law-making

power, which we refer to without committing ourselves to the conclusions reached in the particular case. Pointing out differences between the English and American systems, he says (p. 539): "Under the American Constitution the assent of the President is not essential to the enactment of a single law. His authority over an act of Congress is simply revisory and advisory. * * * If he does not approve, he does not forbid; he does not, in the sense of the Roman law, veto. On the contrary, he returns the bill to Congress with his reasons why it should not become a law —reasons which are not fiats but which are addressed to the legislative intelligence. And he might have added as further showing that the President's assent is not necessary, that if the requisite two-thirds of each House approve [fol. 63] the bill it becomes a law without being presented again to the President. The plaintiffs' contention would seem to imply that the provision "If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him the same shall be a law in like manner as if he had signed it" is all that is said, but the contention disregards the following phrase, "unless the Congress by their adjournment prevent its return, in which case it shall not be a law." The ten days are provided for the President's deliberation and the proper formulation of his objections. They are not needed where he approves the bill or where by his inaction he is willing the bill shall become a law. In the latter case it is declared the bill shall be a law and in another category provided for it is just emphatically declared that the bill shall not be a law, that being where "Congress by their adjournment prevent its return." The contention here is that the Bill became a law because the adjournment of the Congress, which took place within the period of ten days (Sundays excepted) was only an adjournment of the 1st session of the 69th Congress, and the President did not return the bill to the Congress in its next session or in the meantime to officers or employees of the House or Senate who may have been in their places and have kept it until the Congress was again in session. Unless we ignore the provision for a return of the bill within ten days (Sundays excepted), in case the President objects to it, it is manifest

that he should have lodged it with these officers or employees within that period, if the contention have any merit. We look in vain for any requirement that the President return the bill after ten days (Sundays excepted) shall have expired. It is also manifest that unless the concluding phrase, "in which case it shall not be a law," be ignored, there is no merit in the contention. Transmitting the bill to either employees or to the next session will not vitalize a bill that upon the adjournment the Constitution declares shall not be a law. The attempted distinction between adjournment of one or the other session is unsound. The fact in the instant case is that the first session of the 69th Congress adjourned several days before the expiration of the ten-day period provided for, and that was an adjournment of the Congress. The Constitution does not limit the time of adjournment to the final adjournment at the second session, and the courts have no right to so limit it. In La Abra Silver Mining Company v. United States, 175 U. S. 423, it was held that a bill signed by the President during a recess of the Congress and within the period of ten days (Sundays excepted) after it was presented to him became a law, but the court pretermitted the question whether he can sign a bill after the final adjournment of Congress for the session. In the course of the opinion it is said (p. 454): "But the Constitution places the approval and disapproval of bills, as to their becoming laws, upon a different basis. If the President does not approve a bill, he is required within a named time to send it back for consideration. But if by its action, after the presentation of a bill to the President, during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill falls and does not become a law."

[fol. 64] What we have said accords with the early view taken of the effect of an adjournment. In November, 1812, President Madison sent a message to Congress informing them that "the bill failed to become a law" because it had been presented to him "at an hour too near the close of the session to be returned for reconsideration." President

Jackson took a like course in 1832 with a bill passed at the first session and presented to him and the Congress had adjourned within the ten-day period. President Tyler informed the Congress in 1842 that two bills had failed to become laws because presented within the period of ten days (Sunday excepted), but in the meantime the Congress had adjourned. As already said, we do not find a provision requiring the President to call attention to the fact that the bill has failed to become a law, though in the instances mentioned and perhaps in others such a course was pursued.

We conclude that the bill in question never became a law, and therefore that the demurrer should be sustained and the petition dismissed. And it is so ordered.

Moss, Judge; Graham, Judge; and Booth, Judge, concur.

Green, Judge, took no part in the decision of this case.

[fol. 65] VI. JUDGMENT

At a Court of Claims held in the City of Washington on the 16th day of April, A. D., 1928, judgment was ordered to be entered as follows:

This case was submitted upon the defendant's demurrer to the plaintiffs' petition. On consideration whereof the court is of opinion that the demurrer is well taken.

It is therefore adjudged and ordered that the defendant's said demurrer be sustained and that the petition be and the same is hereby dismissed.

VII. PROCEEDINGS AFTER THE ENTRY OF JUDGMENT

On June 9, 1928, the plaintiffs filed a motion for a new trial. On September 28, 1928, the court ordered said motion to the Law Calendar, and set same for hearing on October 15, 1928.

On October 15, 1928, the plaintiffs' motion for a new trial was argued and submitted by Mr. William S. Lewis, for the plaintiffs, and by Mr. William F. Norris, for defendant.

On October 22, 1928, the court entered the following order on said motion:

It is ordered this 22nd day of October, 1928, that the plaintiff's motion for new trial be and the same is overruled.

[fol. 66] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 33,874. Court of Claims. Term No. 565. The Okanogan, Methow, San Pœlis (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington, Petitioners, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed December 4th, 1928. File No. 33,874.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 21, 1929

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.